

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

MYRON J. KILMARTIN,

Plaintiff,

v.

**9:12-CV-1167
(FJS/CFH)**

SCHAFFER, Investigator,

Defendant.

APPEARANCES

OF COUNSEL

**MYRON J. KILMARTIN
07-B-0052**

Wende Correctional Facility
P.O. Box 1187
Alden, New York 14004¹
Plaintiff *pro se*

OFFICE OF THERESA J. PULEO
P.O. Box 12699
Albany, New York 12212
Attorneys for Defendant

MURRAY S. BROWER, ESQ.

SCULLIN, Senior Judge

ORDER

Plaintiff, a former inmate in the custody of the New York State Department of Correctional and Community Supervision ("DOCCS"), brought this action pursuant to 42 U.S.C. § 1983, alleging that Defendant Schaffer violated his constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution. *See* Dkt. No. 1-1, Complaint.

¹ The Court notes that, according to DOCCS's online inmate information database, Plaintiff was released on parole on September 13, 2013. *See* DOCCS, Inmate Population Information Search, <http://nysdoccslookup.doccs.ny.gov/GCA00P00/WIQ2/WINQ120> (last visited October 31, 2013).

Defendant Schaffer moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. *See* Dkt. No. 18. Plaintiff did not file any papers in opposition to that motion. In a Report-Recommendation and Order dated October 9, 2013, Magistrate Judge Hummel recommended that this Court deny Defendant's motion. *See* Dkt. No. 22 at 14. The parties did not file any objections to that recommendation.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting that review, "the Court may 'accept, reject, or modify, in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Hummel's October 9, 2013 Report-Recommendation and Order for clear error and manifest injustice; and, finding none, the Court hereby

ORDERS that Magistrate Judge Hummel's October 9, 2013 Report-Recommendation and Order is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Defendant's motion for summary judgment is **DENIED**; and the Court further

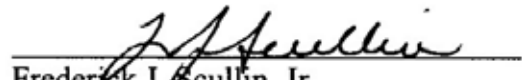
ORDERS that, if Plaintiff does not notify the Court and opposing counsel, in writing, of his current address within **thirty (30) days** of the date of this Order, the Court will dismiss this case for failure to prosecute and for failure to notify the Court and opposing counsel of a change of address in accordance with L.R. 10.1(c)(2) and this Court's September 10, 2012

Memorandum-Decision and Order. *See* Dkt. No. 7, Memorandum-Decision and Order dated September 10, 2012, at 7 ("Plaintiff is also required to promptly notify, in writing, the Clerk's Office and all parties or their counsel of any change in Plaintiff's address; his failure to do so may result in the dismissal of this action."); and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: November 1, 2013
Syracuse, New York


Frederick J. Scullin, Jr.
Senior United States District Court Judge